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Attorneys for Defendant  
OLDCASTLE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICK JACOBS, an individual,

Plaintiff,

v.

OLDCASTLE, INC., a California  
corporation; and DOES 1-100,

Defendant.

Case No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO FEDERAL COURT BY  
DEFENDANT OLDCASTLE, INC.**

**[28 U.S.C. § 1332]**

Santa Clara County Superior Court  
Case No. 17CV316207

Complaint Filed: September 22, 2017

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendant OLDCASTLE, INC. (“OLDCASTLE” or  
3 “Defendant”), hereby gives notice of removal of the above entitled action from the Superior Court of  
4 the State of California, County of Santa Clara, Case No. 17CV316207, to the United States District  
5 Court for the Northern District of California.

6 This Notice is based upon the original jurisdiction of the United States District Court  
7 over the parties under 28 U.S.C. § 1332 based upon complete diversity of citizenship. Defendant  
8 makes these allegations to support its Notice of Removal:

9 **I. JURISDICTION AND VENUE ARE PROPER**

10 1. This action is a civil action over which this court has original jurisdiction  
11 based on diversity of citizenship pursuant to 28 U.S.C. Section 1332(a), and is one which may be  
12 removed to this court by Defendant pursuant to 28 U.S.C. 1441(b) because it is a civil action  
13 between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of  
14 interest and costs, as set forth below. 28 U.S.C. §§1332, 1441(a).

15 2. Venue is proper in this court pursuant to 28 U.S.C. sections 84(a), 1391 and  
16 1446 because this action was filed in the Superior Court of the State of California, County of Santa  
17 Clara. Pursuant to Northern District Local Rule 3-2(e), the appropriate assignment of this action is  
18 to the San Jose Division of this Court.

19 **II. GENERAL INFORMATION**

20 3. On September 22, 2017, Plaintiff filed an action entitled “*RICK JACBOS v.*  
21 *OLDCASTLE, INC., a California corporation; and DOES 1-100,*” in the Superior Court of the State  
22 of California, County of Santa Clara, Case No. 17CV316207 (“Complaint”). In the Complaint,  
23 Plaintiff asserts two causes of action against OLDCASTLE: (1) Employment Discrimination on the  
24 Basis of Race and Color; and (2) Failure to Prevent Discrimination and Retaliation. A true and  
25 correct copy of the Summons and Complaint, together with a Civil Case Cover Sheet, Civil Lawsuit  
26 Notice, and Alternate Dispute Resolution Information Sheet from the Superior Court of the State of  
27  
28

California, County of Santa Clara are attached hereto as **Exhibit A**.<sup>1</sup>

4. OLDCASTLE's registered agent was served with the Complaint on October 6, 2017, via personal service.

5. On November 3, 2017, OLDCASTLE filed a General Denial to Plaintiff's Complaint pursuant to Cal. Code of Civ. Proc. § 431.30(b) in the Santa Clara County Superior Court. A true and correct copy of OLDCASTLE's General Denial to Plaintiff's Complaint is attached hereto as **Exhibit B**.

6. In his Complaint, Plaintiff alleges he was employed by OLDCASTLE for approximately twenty (20) years beginning on or around June 1996.<sup>2</sup> (Complaint, ¶ 11.) Plaintiff alleges that he was the manager in the plant located in Northern California. (Complaint, ¶12.) Plaintiff alleges that at a meeting on or about May 18, 2017, with OLDCASTLE's Regional General Manager, Paul Miller, and OLDCASTLE's plant manager, Jason Jess, Mr. Miller told plaintiff, "he was too white for this job and that the way he dressed was too white, [Plaintiff] just need[ed] to figure out how to be less white." (Complaint, ¶¶ 12, 13.) Plaintiff also alleges that Mr. Miller told Plaintiff, "you need to blend in with other workers, and dress more like Frank Sanchez." (Complaint, ¶ 15.) Additionally, Plaintiff alleges these comments were discriminatory and said with malice, and Plaintiff informed OLDCASTLE's human resources of these comments. (Complaint, ¶¶ 14, 16.) Plaintiff further alleges these comments devastated him, caused him severe emotional distress, and caused him to become further depressed when he thought about the comments made to him in the meeting on May 18, 2017. (Complaint, ¶ 17.)

7. Plaintiff alleges that because of Defendant's alleged unlawful conduct, plaintiff has sustained "lost salaries, fringe benefits, future benefits, salary increases, and promotional opportunities, and sustained impairment to her [sic] earnings capacity." (Complaint, ¶ 19.) Further, Plaintiff alleges that Defendant's alleged unlawful conduct caused him to suffer "severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety." (Complaint, ¶ 20.) The relief sought by Plaintiff includes, among other

<sup>1</sup> Plaintiff's Complaint references an Exhibit A thereto. Defendant, however, was not served with a copy of said Exhibit,

<sup>2</sup> Oldcastle denies that it was Plaintiff's employer, or otherwise had any employment relationship with Plaintiff.

1 things, damages in an amount of no less than \$150,000.00. (Complaint, p. 7.)

2 8. In addition to OLDCASTLE, Plaintiff also names “DOES 1 through 100.”  
3 OLDCASTLE is informed and believes, and on that basis alleges, that none of the fictitiously named  
4 defendants have been identified or served with a copy of the Summons and Complaint. As such, the  
5 fictitiously names defendants need not join or consent to removal. *See* 28 U.S.C. § 1446(b)(2)(A).

### 6 **III. THE NOTICE OF REMOVAL IS TIMELY**

7 9. This Notice to Federal Court of Removal of Civil Action is timely because it  
8 is filed within thirty days of October 6, 2017, the date OLDCASTLE was served with Plaintiff’s  
9 Complaint. 28 U.S.C. § 1446(b); *see Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526  
10 U.S. 344, 348-349 (1999); *Brown v. Demco, Inc.*, 792 F.2d 478 (5th Cir. 1986) (thirty day removal  
11 period runs for all defendants from the date served with the original complaint); *McAnally*  
12 *Enterprises, Inc. v. McAnally*, 107 F. Supp. 2d 1223, 1229 (C.D. Cal. 2000) (same).

### 13 **IV. DIVERSITY JURISDICTION EXISTS**

14 10. This Court has original jurisdiction over this lawsuit under 28 U.S.C. § 1332  
15 and this diversity action may be removed to this Court under 28 U.S.C. §§ 1441 and 1446. “Any  
16 civil action brought in a State court which the district courts of the United States have original  
17 jurisdiction, may be removed by the defendant or the defendants, to the district court of the place  
18 where such action is pending.” 28 U.S.C. § 1441(a). The district courts shall have original  
19 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000,  
20 exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. § 1332(a)(1).

21 11. For diversity jurisdiction purposes, a corporation is deemed to be a citizen of  
22 the state in which is incorporated and the state where it has its principal place of business. 28 U.S.C.  
23 § 1332(c)(1). *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (holding “‘principal place of  
24 business’ is best read as referring to the place where a corporation’s officers direct, control, and  
25 coordinate the corporation’s activities. It is the place that Courts of Appeals have called the  
26 corporation’s ‘nerve center.’”)

27 12. Here, this action involves a controversy between citizens of different states.  
28 At all times, OLDCASTLE was and is a corporation incorporated in and validly existing under and

1 pursuant to the laws of the state of Delaware. As such, OLDCASTLE is a citizen of Delaware as  
2 provided in 28 U.S.C. §1332(c).

3 13. Furthermore, OLDCASTLE's principal place of business and headquarters are  
4 located in Atlanta, Georgia. OLDCASTLE's executive, operational, and administrative office and  
5 functions are all located in Atlanta, Georgia. *See Breitman v. May Co. California*, 37 F.3d 562, 564  
6 (9th Cir. 1994) (holding that "a corporation's principal place of business is the state in which the  
7 executive and administrative functions are performed.").

8 14. For diversity jurisdiction purposes, an individual person's citizenship is  
9 established by where that person is domiciled. 28 U.S.C. §1332(a)(1) (an individual is a citizen of  
10 the state in which he or she is domiciled). A person is deemed to be domiciled by the existence of  
11 both physical presence in a state, coupled with the intent to remain in that state indefinitely. *Lew v.*  
12 *Moss*, 797 F.2d 747, 749-750 (9th Cir. 1886) (holding "a person is 'domiciled' in a location where  
13 he or she has established a 'fixed habitation or abode in a particular place, and [intends] to remain  
14 there permanently or indefinitely'"); *State Farm Mutual Auto Insurance Co. v. Dyer*, 19 F. 3d 514,  
15 520 (10th Cir. 1994) (residence is *prima facie* evidence of domicile to determine citizenship). Here,  
16 as established in his Complaint, "[a]t all times...plaintiff RICK JACOBS...is an individual who was  
17 and is a resident of the State of California, County of Los Angeles." (Complaint ¶ 1.) Plaintiff's  
18 assertion that at all times he was and is a resident of California evidences his domicile. Thus, for  
19 diversity jurisdiction purposes, Plaintiff is a citizen of California.

20 15. Because Plaintiff is self-admittedly a citizen of California, and Defendant is a  
21 citizen of both Delaware and Georgia, complete diversity of citizenship exists between the Parties.

22 16. To remove a case from state court to federal court, the citizenship of Doe  
23 defendants is disregarded, and only named defendants are considered. 28 U.S.C. § 1441(a); *see*  
24 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998) ("district court was correct in only  
25 considering the domicile of the named defendants").

## 26 **V. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.**

27 17. In his Prayer for Relief, Plaintiff specifically prays for "damages in an amount  
28 no less than \$150,000.00." (Complaint, p. 7.) Although Defendant denies liability as to Plaintiff in

any amount, his Complaint affirmatively places the amount in controversy in excess of \$75,000.

**VI. NOTICE OF REMOVAL**

18. As required by 28 U.S.C. § 1446(d), OLDCASTLE will promptly provide written notice of this Notice of Removal to Plaintiff's counsel, Paul Cheng of the Law Offices of Paul Cheng, and will also promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of the State of California, County of Santa Clara.

**VII. CONCLUSION**

As demonstrated above, this Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441(b), and having fulfilled all statutory requirements, OLDCASTLE removes this action from the Superior Court of California, County of Santa Clara, to this Court, and requests this Court assume full jurisdiction over this matter as provided for by law.

Dated: November 3, 2017

/s/ Karin M. Cogbill  
KARIN M. COGBILL  
MICHAEL W. M. MANOUKIAN  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
OLDCASTLE, INC.

Firmwide:150646820.2 081127.1020

# EXHIBIT A

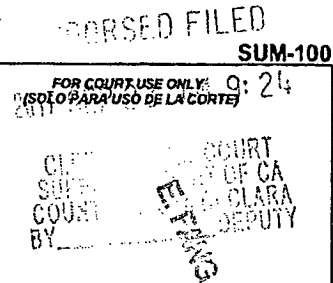
**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

OLDCASTLE, Inc., a California corporation; and DOES 1-100.

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

RICK JACOBS, an individual.



**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of Santa Clara  
191 North First Street, San Jose, CA 95113

CASE NUMBER:  
(Número del Caso): **17CV316207**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
LAW OFFICES OF PAUL P. CHENG, 790 E. Colorado Blvd. Suite 260, Pasadena, CA 91101, 626-356-8880

DATE:  
(Fecha)

**SEP 22 2017**

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

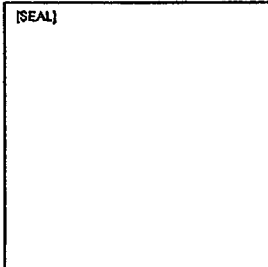
**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Oldcastle, Inc., a California Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):





ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>PAUL P. CHENG (SBN: 239566)</b> <b>LAW OFFICES OF PAUL P. CHENG</b> <b>301 NORTH LAKE AVENUE, SUITE 810</b> <b>PASADENA OFFICES OF PAUL P. CHENG, CA 91101</b> TELEPHONE NO.: 626-356-8880 FAX NO.: 888-213-8196 ATTORNEY FOR (Name): <b>Plaintiff RICK JACOBS</b>		FORCED FILED <b>CM-010</b> FOR COURT USE ONLY 2017 SEP 2 AM 9:24 CLERK OF COURT SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA BY:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Santa Clara</b> STREET ADDRESS: <b>191 North First Street</b> MAILING ADDRESS: <b>191 North First Street</b> CITY AND ZIP CODE: <b>San Jose, CA 95113</b> BRANCH NAME: <b>Santa Clara courthouse</b>		
CASE NAME: <b>RICK JACOBS v. OLDCASTLE, Inc., a California corporation, et al.</b>		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: <b>17CV316207</b>		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/UPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/UPD/WD (23) <b>Non-P/UPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/UPD/WD tort (35) <b>Employment</b> <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

BY FAX

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☐ nonmonetary; declaratory or injunctive relief    c. ☒ punitive
4. Number of causes of action (specify): **2**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 09/21/17

Narak Mirzaie

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties In Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties In Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)–Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) ( <i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i> )	Breach of Rental/Lease Contract ( <i>not unlawful detainer or wrongful eviction</i> )	Construction Defect (10)
	Contract/Warranty Breach–Seller Plaintiff ( <i>not fraud or negligence</i> )	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims ( <i>arising from provisionally complex case type listed above</i> ) (41)
	Collection Case–Seller Plaintiff	Enforcement of Judgment
	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
	Insurance Coverage ( <i>not provisionally complex</i> ) (18)	Abstract of Judgment (Out of County)
	Auto Subrogation	Confession of Judgment ( <i>non-domestic relations</i> )
	Other Coverage	Sister State Judgment
	Other Contract (37)	Administrative Agency Award ( <i>not unpaid taxes</i> )
	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
	Other Contract Dispute	Other Enforcement of Judgment Case
	Real Property	Miscellaneous Civil Complaint
	Eminent Domain/Inverse Condemnation (14)	RICO (27)
	Wrongful Eviction (33)	Other Complaint ( <i>not specified above</i> ) (42)
	Other Real Property (e.g., quiet title) (28)	Dedatory Relief Only
	Writ of Possession of Real Property	Injunctive Relief Only ( <i>non-harassment</i> )
	Mortgage Foreclosure	Mechanics Lien
	Quiet Title	Other Commercial Complaint Case ( <i>non-tort/non-complex</i> )
	Other Real Property ( <i>not eminent domain, landlord/tenant, or foreclosure</i> )	Other Civil Complaint ( <i>non-tort/non-complex</i> )
	Unlawful Detainer	Miscellaneous Civil Petition
	Commercial (31)	Partnership and Corporate Governance (21)
	Residential (32)	Other Petition ( <i>not specified above</i> ) (43)
	Drugs (38) ( <i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i> )	Civil Harassment
	Judicial Review	Workplace Violence
	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ–Administrative Mandamus	Petition for Relief From Late Claim
	Writ–Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ–Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal–Labor Commissioner Appeals	
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort		
Asbestos (04)		
Asbestos Property Damage		
Asbestos Personal Injury/Wrongful Death		
Product Liability ( <i>not asbestos or toxic/environmental</i> ) (24)		
Medical Malpractice (45)		
Medical Malpractice–Physicians & Surgeons		
Other Professional Health Care Malpractice		
Other PI/PD/WD (23)		
Premises Liability (e.g., slip and fall)		
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)		
Intentional Infliction of Emotional Distress		
Negligent Infliction of Emotional Distress		
Other PI/PD/WD		
Non-PI/PD/WD (Other) Tort		
Business Tort/Unfair Business Practice (07)		
Civil Rights (e.g., discrimination, false arrest) ( <i>not civil harassment</i> ) (08)		
Defamation (e.g., slander, libel) (13)		
Fraud (16)		
Intellectual Property (19)		
Professional Negligence (25)		
Legal Malpractice		
Other Professional Malpractice ( <i>not medical or legal</i> )		
Other Non-PI/PD/WD Tort (35)		
Employment		
Wrongful Termination (36)		
Other Employment (15)		

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CLERK OF COURT  
SUPERIOR COURT OF CA  
COUNTY OF SANTA CLARA  
BY \_\_\_\_\_ DEPUTY  
E. FANG

1 PAUL P. CHENG (SBN: 239566)  
litigation@paulchenglaw.com  
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6 Pasadena, CA 91101  
7 Tel: (626) 356-8880  
8 Fax: (888) 213-8196  
9 Attorneys for RICK JACOBS

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA CLARA

12 RICK JACOBS, an individual  
13 Plaintiff,

14 vs.

15 OLDCASTLE, Inc., a California  
16 corporation; and DOES 1-100,  
17 Defendants.

CASE NO. 17CV316207

COMPLAINT

Demand for Jury Trial Requested

1. Employment Discrimination on  
Basis of Race and Color
2. Failure to Prevent Discrimination  
and Retaliation

BY FAX

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27 ///

## I.

**GENERAL ALLEGATIONS****Party Information**

1. At all times mentioned herein, Plaintiff RICK JACOBS ("JACOBS" or "Plaintiff"), is an individual who was and is a resident of the State of California, County of Los Angeles.

2. Plaintiff is informed, believes and thereon alleges that OLDCASTLE, INC. (hereinafter "EMERSON" or "Defendant"), is a California Corporation.

**Doe Defendants**

3. Plaintiff reincorporates paragraphs 1 through 2 as though fully stated herein.

4. The true names and capacities, whether individual, corporate, associate, partnership, governmental or otherwise of DOES 1 through 100, inclusive, are presently unknown to the Plaintiff, and therefore sue said Defendants by such fictitious names pursuant to Code of Civil Procedure Section 474. When the true names and capacities of said Defendants are ascertained, Plaintiff will seek to amend the Complaint accordingly.

5. Plaintiff is informed, believes and thereon alleges that every Defendant designated herein, including all DOE Defendants, were negligently, wrongfully, carelessly, unlawfully, tortuously, or in some other actionable manner, responsible for the events and happenings herein referred to, and that their negligent and/or otherwise tortuous and wrongful acts and/or omissions proximately caused, or were a substantial factor in causing, the injuries and damages to Plaintiff as are herein alleged, and that each Defendants and/or their respective officers, director, partners, managing directors and/or shareholders ratified the wrongful acts and omissions of each other Defendants.

6. Plaintiff is informed, believes and thereon alleges that at all relevant times herein, every Defendant designated, including all DOE Defendants, were an agent, employee, joint venturer, partner, alter ego, conspirator, and/or legal representative of the remaining Defendants, and at all times mentioned herein, every Defendant designated herein, including all DOE Defendants, were acting within the time and authority, course and scope

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1 of said agency, employment, joint venture, partnership, conspiracy, and to further the  
 2 objectives of same, or as an alter ego and with the full knowledge, approval, ratification,  
 3 permission and consent of the other co-Defendants, and each of them, including the  
 4 officers, directors and managing agents of Defendants.

5 7. Plaintiff is informed, believes and thereon alleges that, that at all relevant herein,  
 6 each Defendant designated herein, including all DOE Defendants, were and are, owned,  
 7 operated, and controlled by the same individual(s) and or entity or entities, so that they  
 8 enjoyed the same unity of interest and any corporate individuality among them ceased.  
 9 Plaintiff is further informed, believes, and thereon alleges that certain interests or legal  
 10 relationships between the Defendants have been transferred, sold or acquired such that the  
 11 purchaser expressly or impliedly agreed to assume the predecessor's obligation, the  
 12 purchase was a de facto consolidation or merger, the successor is a mere continuation of  
 13 the predecessor, the transaction was fraudulently entered into to escape liability and that by  
 14 agreement amongst the Defendants liability for the acts and events herein alleged has been  
 15 contractually specified among the Defendants, the exact terms and nature of which are  
 16 unknown. When the true facts are ascertained leave will be requested of the court to allege  
 17 the true facts with respect to such successor in interest, transfer and assignment of liability.

18 8. Plaintiff is informed, believes and thereon alleges that if judgment should be had  
 19 against one Defendant then it would be appropriate to find against all Defendants;  
 20 otherwise, injustice would result.

#### 21 General Violations

22 9. Plaintiff reincorporates paragraphs 1 through 8 as though fully stated herein.

23 10. This is a complaint of an exemplary, contentious twenty (20) years former  
 24 employee of one of the country's largest companies who has endured significant injuries  
 25 due to Plaintiff's age and disability. Despite his disability, Plaintiff has at all times been  
 26 desirous of committing his continued excellence, heart and soul to his career, only to be  
 27 discriminated against in the workplace, because of his color and race. Having endured  
 28 discrimination, Plaintiff had no alternative but to retain counsel to effect systematic



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1 workplace changes on his own behalf and other employees of same race and color.

2 11. Plaintiff began working for Oldcastle on or about June 1996. Plaintiff was an  
3 excellent performer, with flexibility, keen attention to details, and had the ability to grasp  
4 new concepts quickly.

5 12. Plaintiff was the manager in the plant located in Northern California. On or about  
6 May 18, 2017, Plaintiff was called into a meeting with Regional GM Paul Miller and the  
7 plant manager Jason Jess.

8 13. During the meeting while discussing work policies with the Plaintiff, Mr. Miller  
9 told Plaintiff that, "he was too white for this job and that the way he dressed was too white,  
10 you just need to figure out how to be less white." Plaintiff was shocked and speechless by  
11 Mr. Miller's comments.

12 14. Plaintiff was shocked and speechless by Mr. Miller's comments. Mr. Miller's  
13 comments were discriminatory and were done with malice. Mr. Jacobs supervises  
14 approximately 27 workers, which 26 are Hispanic.

15 15. Furthermore, the workers which Plaintiff supervises dress precast clothing which is  
16 predominantly khakis pants and dark shirts. Plaintiff would dress casual like other  
17 managers in Oldcastle. Mr. Miller further told the Plaintiff, "You need to blend in with  
18 other workers, and dress more like Frank Sanchez." Frank Sanchez was the person who  
19 trained the Plaintiff. Mr. Sanchez was a Hispanic employee who would also dress in  
20 precast clothing.

21 16. Mr. Jacobs informed the human resources department of this incident. After several  
22 weeks of "investigations" by the human resources, they informed Mr. Jacobs that there  
23 was no evidence of Mr. Miller's acts, and concluded its investigation.

24 17. Plaintiff was devastated and suffered severe emotional distress do to Mr. Miller's  
25 comments. Plaintiff could not properly work and every time he would think about the  
26 incident that took place during the meeting, he would become further depressed. After 20  
27 years of employment with Oldcastle, Plaintiff felt betrayed and disrespected.

28 18. On August 22, 2017, Plaintiff filed his charges with the Department of Fair

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1 Employment and Housing ("DFEH"). Said charges are attached hereto as Exhibits "A" and  
 2 incorporated by reference herein.

3 19. As a result of the aforesaid wrongful acts of Defendants, Plaintiff sustained lost  
 4 salaries, fringe benefits, future bonuses, salary increases, and promotional opportunities,  
 5 and sustained impairment to her earnings capacity. The precise amount of said damages is  
 6 presently unascertainable except that said amount is well in excess of this Court's  
 7 minimum jurisdictional threshold.

8 20. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff  
 9 has been caused to and did suffer and continues to suffer severe emotional and mental  
 10 distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety.  
 11 Thus, Plaintiff seeks special and general damages for such physical and emotional distress  
 12 in an amount substantially in excess of this Court's minimum jurisdictional threshold.

13 21. Plaintiff is informed and believes and thereon alleges that Defendants and their  
 14 managers, officers, and/or directors committed the acts alleged herein maliciously,  
 15 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted  
 16 with an improper and evil motive amounting to malice or oppression, and in conscious  
 17 disregard of Plaintiff's rights. Moreover, of their employees and/or are personally guilty of  
 18 oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from  
 19 Defendants in an amount according to proof.

20 22. Further, Plaintiff is entitled to the recovery of her attorneys' fees and costs by the  
 21 application of California Code of Civil Procedure §1021.5, California Government Code  
 22 §12965, California Labor Code §1194 and other analogous statutory authorities.

## 23 II

### 24 FIRST CAUSE OF ACTION

#### 25 (Employment Discrimination On Basis Of Race and Color Against Defendants And 26 Does 1 Through 100)

27 23. Plaintiff re-alleges each paragraph of this Complaint as though fully set forth  
 28 herein.

24. During the course of Plaintiff's employment, as alleged herein, the Defendants named in this cause of action subjected Plaintiff to an employment discrimination based on the Plaintiff's race and color, practices violative of California Government Code §12940 *et seq.*, with emphasis on California Government Code § 12940(a), and the rights guaranteed by the California Constitution, Article I, Section 7 & 8. For the purposes of this count, said acts constitute unlawful disability based employment discrimination.

25. By reason of the aforementioned conduct and circumstances, Defendants violated the fundamental public policies of the State of California, as set forth in Section 12940 of the California Government Code, which mandates that employees be free from discrimination on the basis of race and color.

#### V.

#### SECOND CAUSE OF ACTION

**(Failure to Prevent Discrimination and Retaliation against all Defendants And Does 1 Through 100)**

26. Plaintiff re-alleges each paragraph of this Complaint as though fully set forth herein.

27. During the course of Plaintiff's employment, as alleged herein, the Defendants named in this cause of action subjected Plaintiff failed to take all reasonable steps necessary to prevent discrimination and retaliation from occurring, in violation of California Government Code § 12940 *et seq.*, with emphasis on California Government Code §12940(k), and the rights guaranteed by the California Constitution, Article I, Section 7 & 8. For the purposes of this count, said acts constitute unlawful disability and public policy based employment practices based on the failure to take all reasonable steps from preventing unlawful discrimination from occurring, including the failure to meaningfully investigate and remediate such discrimination.

#### PRAYER

WHEREFORE, Plaintiff prays for Judgment against all Defendants, and each of them, as follows:



1. Damages in an amount no less than \$150,000.00.
2. For interest thereon at the legal rate.
3. For costs and reasonable attorney's fees as provided by law.
4. For a four-thousand dollar (\$4000) penalty.
5. Injunctive relief as allowed by Labor Code 226(g).
6. Restoration of money acquired by unfair competition
7. Fifty dollars (\$50) for the first initial violation to be determined at trial.
8. One-hundred dollars (\$100) for each subsequent violation to be determined at trial.
9. Waiting time penalties.
10. For a seven-hundred-fifty dollar (\$750) penalty from Defendants.
11. Damages arising out of Defendant's violation of labor code 132(a).
12. For such other and further relief that the court shall deem just and proper.

X.

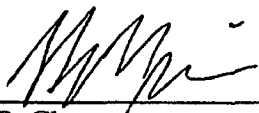
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury.

**DATED: September 21, 2017**

**Law Offices of Paul P. Cheng**

**BY:**

  
Paul P. Cheng  
Michael Y. Yadegaran  
Narak Mirzaie  
Attorneys for RICK JACOBS

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**SANTA CLARA COUNTY SUPERIOR COURT  
ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION SHEET**

---

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

**Arbitration** is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

**Civil Judge ADR** allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

**Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

**Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

***What kind of disputes can be resolved by ADR?***

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

***Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?***

**Contact:**

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2784

ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 North First St., San José, CA 95113

CASE NUMBER: 17CV316207**PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm) and [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm)
- Local Rules and Forms: [www.scscourt.org](http://www.scscourt.org)

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

*You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Maureen Folan Department: 8

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: 11/9/2018 Time: 3:00pm in Department: 8

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.scscourt.org](http://www.scscourt.org) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

# **EXHIBIT B**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): KARIN M. COGBILL, Bar No. 244606 MICHAEL W. M. MANOUKIAN, Bar No. 308121 LITTLER MENDELSON, P.C. 50 W. San Fernando St., 7th Floor, San Jose, CA 95113-2431 TELEPHONE NO.: 408.998.4150 FAX NO. (Optional): 408.288.5686 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant OLDCASTLE, INC.	FOR COURT USE ONLY  <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">ENDORSED</div> <div style="font-size: 1.2em; font-weight: bold; margin: 10px 0;">2017 NOV -3 A 11:30</div> <div style="font-size: 0.8em; margin: 10px 0;">           CLERK OF THE COURT            SUPERIOR COURT OF CA            COUNTY OF SANTA CLARA            BY <i>K. Taylor</i> DEPUTY         </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SANTA CLARA</b> STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Courthouse	
PLAINTIFF/PETITIONER: RICK JACOBS  DEFENDANT/RESPONDENT: OLDCASTLE, INC., et al.	
<b>GENERAL DENIAL</b>	CASE NUMBER: 17CV316207
<p>If you want to file a general denial, you <b>MUST</b> use this form if the amount asked for in the complaint or the value of the property involved is \$1,000 or less.</p> <p>You <b>MAY</b> use this form for a general denial if:</p> <ol style="list-style-type: none"> <li>1. The complaint is not verified; <i>or</i></li> <li>2. The complaint is verified and the case is a limited civil case (the amount in controversy is \$25,000 or less), BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection.</li> </ol> <p>(See Code of Civil Procedure sections 85–86, 90–100, 431.30, and 431.40.)</p>	

1. DEFENDANT (name): Defendant OLDCASTLE, INC.  
generally denies each and every allegation of plaintiff's complaint.
2. ☒ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):  
See attached Affirmative Defenses.

Date: November 3, 2017

KARIN M. COGBILL

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

*Karin Cogbill*

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10–426.40.)

The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

**RICK JACOBS v. OLDCASTLE, INC., et al.****Superior Court of California, County of Santa Clara, Case No. 17CV316207****AFFIRMATIVE DEFENSES TO COMPLAINT**

Without conceding it has the burden of proof or persuasion as to any of these issues, Defendant OLDCASTLE, INC. ("OLDCASTLE" or "Defendant") states these facts as separate affirmative defenses to each allegation of the Complaint filed by Plaintiff RICK JACOBS ("Plaintiff"), all of which are pleaded in the alternative, and constitute no admission of liability or that Plaintiff is entitled to any relief whatsoever:

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges that Plaintiff's complaint fails to state a cause of action against Defendant since Defendant was not Plaintiff's employer.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges Plaintiff has failed to timely exhaust his administrative remedies, including but not limited to those required pursuant to the California Fair Employment and Housing Act, California Government Code section 12940 *et seq.*

AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges the Complaint, and each cause of action therein, is barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, California Government Code sections 12960(d) and 12965(b).

AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges Plaintiff failed to mitigate his damages, which he alleged he suffered, if any such damages occurred, and such failure to mitigate bars and/or diminishes Plaintiff's recovery.

AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges, that assuming *arguendo*, it was Plaintiff's employer, Plaintiff's causes of action are barred as there were legitimate,



1 non-discriminatory, non-retaliatory reasons for each employment practice or action alleged to have  
2 harmed Plaintiff.

3 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges, that assuming  
5 *arguendo*, it was Plaintiff's employer, and all of Plaintiff's alleged injuries, including any emotional  
6 distress Plaintiff may have suffered, arose during and because of such employment; this Court's  
7 jurisdiction over the subject of the causes of action is preempted by the exclusive remedy provisions  
8 of the California Workers' Compensation Act as set forth in the California Labor Code Section  
9 3200, *et seq.*

10 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
11 THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, that Plaintiff is barred in equity from  
12 recovering on his Complaint, or any claim contained therein, under the doctrine of unclean hands,  
13 estoppel and/or laches.

14 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
15 THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges that at all times  
16 Defendant acted in good faith, without malice, and in due regard to the rights of Plaintiff.

17 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
18 CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges that assuming  
19 *arguendo*, it was Plaintiff's employer, it promulgated an anti-discrimination and anti-harassment  
20 policy and complaint procedure of which Plaintiff was aware, and it exercised reasonable care to  
21 maintain a discrimination-free work environment. Plaintiff unreasonably failed to take advantage of  
22 the established complaint procedures, failed to take advantage of other preventative or corrective  
23 opportunities provided by Defendant, and otherwise failed to avoid harm.

24 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
25 CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant alleges that if Plaintiff has  
26 suffered any emotional distress (and Defendant denies that Plaintiff has suffered such distress), such  
27 emotional distress was proximately caused by factors other than the actions of Defendant, or anyone  
28 acting on its behalf.




1 AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
2 THE CLAIMS SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant has not yet completed  
3 their investigation and study or completed discovery of all facts and circumstances of the subject  
4 matter of Plaintiff's claims, and accordingly, reserve the right to amend, modify, revise or  
5 supplement their General Denial and Affirmative Defenses and take such further action as Defendant  
6 may deem proper and necessary in their defense of Plaintiff's claims.

7  
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- 10 1. That Plaintiff takes nothing by his Complaint;
- 11 2. That the Complaint be dismissed in its entirety, with prejudice, and that
- 12 Judgment be entered against Plaintiff and in favor of Defendant on Plaintiff's causes of action;
- 13 3. That Defendant is granted its reasonable costs and attorneys' fees in defending
- 14 this action; and
- 15 4. For such other and further relief as the Court deems just and proper.

16 Dated: November 3, 2017

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19 \_\_\_\_\_  
20 KARIN M. COGBILL  
21 MICHAEL W. M. MANOUKIAN  
22 LITTLER MENDELSON, P.C.  
23 Attorneys for Defendant  
24 OLDCASTLE, INC.

25 Firmwide:150645866.1 081127.1020

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: KARIN M. COGBILL, Bar No. 244606 MICHAEL W. M. MANOUKIAN, Bar No. 308121 FIRM NAME: LITTLER MENDELSON, P.C. STREET ADDRESS: 50 W. San Fernando, 7th Floor CITY: San Jose STATE: CA ZIP CODE: 95113 TELEPHONE NO.: 408.998.4150 FAX NO.: 408.288.5686 E-MAIL ADDRESS: ATTORNEY FOR (name): Defendant OLDCASTLE, INC.	FOR COURT USE ONLY  <div style="font-size: 24pt; font-weight: bold; margin: 10px 0;">ENDORSED</div> <div style="font-size: 18pt; font-weight: bold; margin: 10px 0;">2017 NOV -3 A 11: 30</div> <div style="font-size: 12pt; margin: 10px 0;">           CLERK OF THE COURT            SUPERIOR COURT OF CA            COUNTY OF SANTA CLARA            BY <u>W. Taylor</u> DEPUTY         </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Courthouse	CASE NUMBER: 17CV316207
Plaintiff/Petitioner: RICK JACOBS Defendant/Respondent: OLDCASTLE, INC., et al.	JUDICIAL OFFICER:  DEPARTMENT:
<b>PROOF OF SERVICE-CIVIL</b>	
Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	

**Do not use this form to show service of a summons and complaint or for electronic service.**  
 See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:  
50 W. San Fernando, 7th Floor, San Jose, CA 95113
3. ☐ The fax number from which I served the documents is (complete if service was by fax):
4. On (date): 11/3/2017 I served the following documents (specify):  
 DEFENDANT OLDCASTLE, INC.'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO COMPLAINT  
☐ The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
  - a. Name of person served: Paul P. Cheng / Michael Y. Yadegaran / Narak Mirzaie
  - b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
 Business or residential address where person was served:  
 LAW OFFICES OF PAUL P. CHENG - 790 E Colorado Blvd, Suite 260, Pasadena, CA 91101
  - c. ☐ (Complete if service was by fax.)  
 (1) Fax number where person was served:  
  
 (2) Time of service:  
  
☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

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6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*: San Jose, CA
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 11/3/2017

Jennifer Ilas

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

*(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)*

#### DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)